

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DIANE SHEARS

PLAINTIFF

vs.

No. 1:22-cv-2099-LAH

**AMERICAN PUBLIC DEFENSE, INC.,
and LEWIS BROWN**

DEFENDANTS

MOTION FOR DEFAULT JUDGMENT

Plaintiff Diane Shears ("Plaintiff"), by and through her attorney Josh Sanford of Sanford Law Firm, PLLC, for her Motion for Default Judgment ("Motion"), hereby states and alleges as follows:

1. Plaintiff seeks a default judgment against Defendant Lewis Brown ("Defendant"), in the amount of \$8,527.69, plus an equal amount as liquidated damages; \$8,874.31 in statutory premiums; and \$25,583.06 in statutory treble damages—for a total of \$51,512.75 plus attorney's fees and costs. See Declaration of Diane Shears, attached hereto as Exhibit 1.

2. Plaintiff seeks a default judgment against Defendant in the amount of \$6,239.54 for attorneys' fees and costs. See Declaration of Josh Sanford, attached hereto as Exhibit 3.

3. Plaintiff filed her Original Complaint on April 22, 2022 (ECF No. 1) against Defendant Lewis Brown.

4. Plaintiff served Defendant with the Complaint and Summons on May 4, 2022, and filed the Proof of Service on July 25, 2022. ECF No. 7.

5. Defendant's deadline for filing and serving an Answer or Motion to Dismiss was May 25, 2022, and no other time limit was fixed by this Court.

6. Defendant has not filed or served an Answer or Motion to Dismiss in accordance with Fed. R. Civ. P. 12(a)(1).

7. No extension for filing or serving a proper Answer or Motion to Dismiss has been requested or granted. ECF No. 8-1, Sanford Decl. Ex. 1, at ¶¶ 4–5.

8. Defendant is not in military service, so 50 U.S.C. § 3931 is no bar to entry of a default judgment against Defendant. ECF No. 8-1, at ¶ 6.

9. On December 22, 2022, this Court entered Default against Defendant. ECF No. 9.

10. Plaintiff is entitled to Judgment by default against Defendant based on the claims set forth in her Complaint, which alleged:

a. Defendant is an individual and resident of Illinois, who is the operating employer of the domestic, for-profit corporation, American Public Defense, Inc. ("ADP"). ECF No. 1, at ¶¶ 7-9, 14-16.

b. ADP is a business subject to the FLSA because its annual gross volume of sales made or business done is at least \$500,000.00, and it has at least two employees who handle, sell, or otherwise work on goods or materials that have been moved in or produced for commerce. *Id.* at ¶¶ 12–13.

c. Defendant employed Shears as a Security Officer from July of 2021 until December of 2021. *Id.* at ¶ 18.

d. Defendant determined the hours worked by Plaintiff, the manner in which she performed her job duties, and Plaintiff's schedule. *Id.* at ¶¶ 15, 21.

e. Defendant misclassified Plaintiff as an independent contractor exempt from the provisions of the FLSA and paid her a regular rate for all hours worked. *Id.* at ¶¶ 22-44, 46.

f. Plaintiff regularly worked more than 40 hours per week. *Id.* at ¶ 45.

g. Defendant did not pay Plaintiff an overtime premium for hours worked over 40 each week. *Id.* at ¶ 47.

h. Defendant regularly “fined” Plaintiff for various offenses, sometimes deducting so much money from Plaintiff’s paycheck that her constructive hourly rate fell below the applicable minimum wage. *Id.* at ¶¶ 48-49.

i. Defendant willfully violated the provisions of 29 U.S.C. §§ 206 and 207, by failing to pay an employee engaged in commerce, one and one-half (1.5) times regular wages for all hours worked over forty (40) in a week. *Id.* at ¶¶ 64-67.

j. Defendant willfully violated the provisions of IMWL, 820 ILCS 105/1, *et seq.*, by failing to pay Plaintiff, an employee engaged in commerce, 1.5x regular wages for all hours worked over 40 in a week. *Id.* at ¶¶ 73-76.

k. Defendant violated the provisions of the IWPCA, 820 ILCS 115/1, *et seq.*, by failing to pay Plaintiff, an employee engaged in commerce, all wages and final compensation due. *Id.* at ¶¶ 81-86.

11. With this Motion, Plaintiff submits the following exhibits: Declaration of Diane Shears (Exhibit 1), Damages Calculations (Exhibit 2), and Declaration of Josh Sanford (Exhibit 3). Plaintiff also files herewith and incorporates herein a Brief in Support of Motion for Default Judgment.

WHEREFORE, premises considered, Plaintiff Diane Shears respectfully requests that this Court grant this Motion in full; find that Defendant violated the provisions of the Fair Labor Standards Act and the Illinois Minimum Wage Law as alleged in Plaintiff's Complaint; enter a default judgment against Defendant in the amount of \$51,512.75 to Plaintiff Diane Shears; award Plaintiff's counsel \$6,239.54 for attorney's fees and costs; and for all other good and proper relief to which Plaintiff may be entitled, whether or not specifically requested herein.

Respectfully submitted,

PLAINTIFF DIANE SHEARS

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/s/ Josh Sanford
Josh Sanford
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CERTIFICATE OF SERVICE

I, Josh Sanford, hereby certify that, on this 20th day of July, 2023, a true and correct copy of the foregoing Motion for Default Judgment and its related exhibits, were served via a postage-paid envelope addressed to the Defendant, at the address stated below, which is the last known address of the Defendant, and said envelope was deposited with UPS/FEDEX on this same date.

Lewis Brown
277 Somonauk Street
Park Forest, Illinois 60466

/s/ Josh Sanford

Josh Sanford